

National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: May 12, 1997

TO: James J. McDermott, Regional Director, Region 31

FROM: Barry J. Kearney, Associate General Counsel, Division of Advice

SUBJECT: ABC, Case 31-CA-22493

530-6067-6001-3750, 530-6067-6001-7500, 530-6067-6033-7000, 530-6067-6067-7100, 625-8883-6600

This Section 8(a)(5) case was submitted for advice as to whether the Employer was obligated to inform the Union of the workplace locations where it intended to place covert surveillance cameras.

The Region should issue a Section 8(a)(5) complaint, absent settlement.

In *Colgate-Palmolive Company*, 323 NLRB No. 82 (1997), the Board held that the installation of surveillance cameras is a mandatory subject and that an employer must bargain with a union concerning, inter alia, "the installation and continued use of surveillance cameras, including the circumstances under which the cameras will be activated, the general areas in which they may be placed, and how affected employees will be disciplined if improper conduct is observed." *Id.*, slip op. at 2.

Here, it is clear that the Union has the right to bargain about the installation and location of surveillance cameras. Therefore, the Union is entitled to information it needs to engage in meaningful bargaining, including information about the location of those cameras. However, the Employer has refused to disclose the locations of the cameras to the Union. Without that information, the Union cannot engage in meaningful bargaining. Thus, the Employer's refusal to provide the information arguably violates Section 8(a)(5).

However, the Board recognized in *Colgate-Palmolive*, slip op. at 2 fn. 10, that an employer has a valid confidentiality concern about camera location, that is, if the locations of surveillance cameras are common knowledge, their effectiveness for surveillance purposes may be undermined. Nonetheless, the Board found that bargaining as to location, including "mutual accommodations," was required. Therefore, because the Employer in this case is obligated to bargain with the Union about the location of the cameras, it must also bargain concerning a reasonable accommodation of the tension between the Union's right to obtain information it needs for bargaining about the camera locations and the Employer's interest in preserving the effectiveness of the cameras by limiting the disclosure of such information. See *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). Such bargaining about a reasonable accommodation has not occurred here.

[FOIA Exemption 5.]

B.J.K.